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No. 1082

In the Supreme Court of the United States

October Term, 1970

SALVATORE BATTAGLIA,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

REPLY TO THE MEMORANDUM OF THE UNITED STATES IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1032

SALVATORE BATTAGLIA,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

REPLY TO THE MEMORANDUM OF THE UNITED STATES IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

In this reply, the Petitioner will limit himself to directing the Court's attention to several decisions which, it is believed, are pertinent to the issues made by the Petition and response.

1. It is respectfully submitted that on January 11, 1971, in *Bostic* v. *United States*, No. 5230, October Term 1970, this Court granted review on Petition for Certiorari. Questions there involved are strikingly similar to issues involved in the case at bar.

Question 1 in the *Bostic* case is:

> "(1) Does Bruton v. U.S., 391 U.S. 423, 3 CrL 3085, invalidate the rule that evidence of statements by one conspirator in furtherance of the conspiracy are admissible against all members of the conspiracy, and not only the declarant?"

Question 3 in the *Bostic* case is:

> "(3) Did the totality of the circumstances, including pretrial publicity, joinder of other defendants and offenses, prosecutorial tactics, instructions, and latitude given the government in examining its own witnesses, deprive the defendant of a fair trial?"

Question 3 in the *Bostic* case on which certiorari has been granted, relates to question 7 presented in the Battaglia Petition herein, with related argument thereon appearing in "Reasons for Granting the Writ" under point 4 at Page 32 *et seq.*

However, the entire impact of prejudicial occurrences during the trial as asserted in all of the questions in the Battaglia Petition herein and in the "Reasons for Granting the Writ", should be reviewed by this Court.

2. In *United States* v. *Schartner*, 426 F.2d 470, 478, the Third Circuit Court of Appeals reversed for failure of the trial court to afford Schartner's counsel opportunity to object to the charge outside the jury's hearing, 426 F.2d 478.

Question 4(b) in Battaglia's Petition for Certiorari herein, and argument made under No. 5 of "Reasons for Granting the Writ" at Page 40, present in this case this question. The Court's conduct of the matter appears at A. 742, *et seq.*, and is described at Pages 40 and 41 of the Petition.

CONCLUSION

While the Petitioner seeks grant of certiorari, and in support of this request relies upon all of the points urged, and cumulative errors indicated therein, it is respectfully suggested that Petitioner should at least be granted the review involved in *Bostic* v. *United States*, No. 5250, October 1970 Term, Certiorari granted January 11, 1971.

Respectfully submitted,

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